

1 Robert C. Weiss (State Bar No. 39,929)
rcweiss@jonesday.com
2 Charles A. Kertell (State Bar No. 181,214)
cakertell@jonesday.com
3 JONES DAY
555 South Flower Street, 50th Floor
4 Los Angeles, CA 90071
Telephone: (213) 489-3939
5 Facsimile: (213) 243-2539

JS-6

6 Attorneys for Plaintiff
MAG INSTRUMENT, INC.

7 Anne H. Peck (State Bar No. 124,790)
8 peckah@cooley.com
COOLEY GODWARD KRONISH LLP
9 Five Palo Alto Square
3000 El Camino Real
10 Palo Alto, CA 94306-2155
Telephone: (650) 843-5000
11 Facsimile: (650) 857-0663

12 Attorneys for Defendants
HARLEY-DAVIDSON, INC. AND MTMC, INC.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

17 MAG INSTRUMENT, INC.,
18 Plaintiff,
19 v.
20 HARLEY-DAVIDSON, INC. and
MTMC, INC.
21 Defendants.

Case No. CV 08-3552 R (JWJx)

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

Hon. Manuel L. Real

1 WHEREAS, Mag Instrument, Inc. ("Mag Instrument") and MTMC, Inc.
2 ("MTMC") have agreed in a separate agreement to settlement of the matters in issue
3 between them and to entry of this Consent Judgment and Permanent Injunction, it is
4 hereby ORDERED, ADJUDGED, AND DECREED THAT:

5 1. This is an action for: (1) patent infringement under the patent laws of
6 the United States, 35 U.S.C. §271, et seq.; (2) federal trademark infringement,
7 federal false designation of origin, and federal trademark dilution under the
8 Trademark (Lanham) Act of 1946, as amended, 15 U.S.C. §1051, et seq.; (3) state
9 trademark infringement under California Civil Code §3294; (4) statutory unfair
10 competition under California Business and Professions Code §17200, et seq.; (5)
11 trademark dilution under California Business and Professions Code §14247; (6)
12 common law trademark infringement; and (7) common law unfair competition.

13 2. This Court has jurisdiction over all of the parties in this action and
14 over the subject matter in issue based on 28 U.S.C. §§1331, 1338(a), 1338(b), and
15 1367(a), as well as 15 U.S.C. §1121(a). This Court further has continuing
16 jurisdiction to enforce the terms and provisions of this Consent Judgment and
17 Permanent Injunction. Venue is also proper in this Court pursuant to 28 U.S.C.
18 §§1391(b) and 1391(c), as well as 28 U.S.C. §1400(b).

19 3. Mag Instrument is a corporation incorporated under the laws of the
20 State of California and has its principal place of business at 2001 South Hellman
21 Avenue, Ontario, California 91761.

22 4. MTMC, Inc. is a corporation incorporated under the laws of the State
23 of California and has its principal place of business at 18003 Sky Park Circle, Suite
24 E, Irvine, California 92614.

25 5. MTMC has manufactured, used, marketed, distributed, advertised,
26 promoted, imported, offered for sale, and/or sold, commercially in interstate
27 commerce a certain flashlight, which is shown in **Exhibit 1** (the "Harley-Davidson
28

1 flashlight"). The Harley-Davidson flashlight was neither manufactured nor
2 authorized by Mag Instrument.

3 6. Mag Instrument is, by assignment, the owner of all right, title, and
4 interest in United States Patent No. D530,438 ("the '438 patent") and United States
5 Patent No. D530,439 ("the '439 patent"). Copies of these patents are attached
6 hereto as **Exhibits 2 & 3**, respectively.

7 7. The '438 patent, issued on October 17, 2006, is valid and enforceable
8 and has been infringed by MTMC's manufacture, use, importation, offer for sale,
9 and/or sale of the Harley-Davidson flashlight.

10 8. The '439 patent, issued on October 17, 2006, is valid and enforceable
11 and has been infringed by MTMC's manufacture, use, importation, offer for sale,
12 and/or sale of the Harley-Davidson flashlight.

13 9. MTMC will not directly or indirectly aid, assign, or participate in any
14 action contesting the validity of the '438 patent and/or the '439 patent.

15 10. For many years, and prior to the acts of MTMC discussed herein, Mag
16 Instrument has continuously manufactured, used, marketed, distributed, advertised,
17 promoted, marketed, offered for sale, and sold, in interstate commerce, lines of
18 flashlights, including, but not limited to, a line of flashlights under the distinctive
19 trademark MINI MAGLITE®. These flashlights are also characterized by their
20 distinctive shape, style, and overall appearance ("SSOA").

21 11. The SSOA of the MINI MAGLITE® flashlight is non-functional and
22 has acquired secondary meaning in that it has come to be associated by the trade
23 and consuming public exclusively with Mag Instrument and, as a result, has come
24 to signify Mag Instrument as the source of flashlights bearing the same or similar
25 characteristics.

26 12. Mag Instrument has obtained, and is the owner of, a federal
27 registration on the SSOA of the MINI MAGLITE® flashlight (the "SSOA
28 Trademark"), which is valid and enforceable throughout the United States. A copy

1 of the SSOA Trademark (United States Trademark Registration Number 2,074,795)
2 is attached hereto as **Exhibit 4**. This registration remains in full force and effect
3 and is incontestable.

4 13. The Harley-Davidson flashlight has a shape, style, and overall
5 appearance that is the same as, or confusingly similar to, the SSOA Trademark.

6 14. MTMC's manufacture, use, marketing, distribution, advertising,
7 promotion, importation, offer for sale, and/or sale of the Harley-Davidson flashlight
8 is likely to cause, and has caused, confusion, mistake, and deception among the
9 consuming public in that its shape, style, and overall appearance colorably imitates
10 Mag Instrument's SSOA Trademark.

11 15. MTMC's use of the SSOA Trademark constitutes trademark
12 infringement of Mag Instrument's federally registered SSOA Trademark in
13 violation of the Lanham Act, 15 U.S.C. §1051, et seq., to the substantial and
14 irreparable injury of the public and of Mag Instrument's business reputation and
15 goodwill.

16 16. By manufacturing, using, marketing, distributing, advertising,
17 promoting, importing, offering for sale, and/or selling the Harley-Davidson
18 flashlight, MTMC has infringed on Mag Instrument's federal and common law
19 trademark rights in the SSOA Trademark in violation of Section 43(a) of the
20 Landham Act, 15 U.S.C. §1125(a), as such acts are likely to deceive, and have
21 deceived, customers and prospective customers into believing that MTMC's
22 flashlights are from, sponsored by, or affiliated with Mag Instrument.

23 17. The SSOA Trademark is a distinctive and famous mark.

24 18. MTMC began manufacturing, using, marketing, distributing,
25 advertising, promoting, importing, offering for sale, and/or selling the Harley-
26 Davidson flashlight subsequent to Mag Instrument's SSOA Trademark becoming
27 distinctive and famous.
28

1 19. MTMC's commercial use in commerce of the SSOA Trademark in
2 connection with flashlights has caused the dilution of the distinctive quality of the
3 SSOA Trademark in violation of 15 U.S.C. §1125(c) and California Business and
4 Professions Code §14247.

5 20. MTMC's manufacture, use, marketing, distributing, advertising,
6 promoting, importing, offering for sale, and/or sale of flashlights with the SSOA
7 Trademark constitutes statutory unfair competition in violation of California
8 Business & Professions Code §17200, et seq., common law trademark
9 infringement, and common law unfair competition.

10 21. Mag Instrument has also obtained, and is the owner of, a federal
11 registration on the use of an inscription around the circumference of the circular
12 face cap cover or head of a flashlight (the "Circumferential Inscription
13 Trademark"), which is valid and enforceable throughout the United States. A copy
14 of the Circumferential Inscription Trademark (United States Trademark
15 Registration Number 1,808,998) is attached hereto as **Exhibit 5**. This registration
16 remains in full force and effect and is incontestable.

17 22. The Harley-Davidson flashlight has an inscription that is the same as,
18 or confusingly similar to, the Circumferential Inscription Trademark.

19 23. MTMC's manufacture, use, marketing, distribution, advertising,
20 promotion, importation, offer for sale, and/or sale of the Harley-Davidson flashlight
21 is likely to cause, and has caused, confusion, mistake, and deception among the
22 consuming public in that its inscription colorably imitates Mag Instrument's
23 Circumferential Inscription Trademark.

24 24. MTMC's use of the Circumferential Inscription Trademark constitutes
25 trademark infringement of Mag Instrument's federally registered SSOA Trademark
26 in violation of the Lanham Act, 15 U.S.C. §1051, et seq., to the substantial and
27 irreparable injury of the public and of Mag Instrument's business reputation and
28 goodwill.

1 25. By manufacturing, using, marketing, distributing, advertising,
2 promoting, importing, offering for sale, and/or selling the Harley-Davidson
3 flashlight, MTMC has infringed on Mag Instrument's federal and common law
4 trademark rights in the Circumferential Inscription Trademark in violation of
5 Section 43(a) of the Landham Act, 15 U.S.C. §1125(a), as such acts are likely to
6 deceive, and have deceived, customers and prospective customers into believing
7 that MTMC's flashlights are from, sponsored by, or affiliated with Mag Instrument.

8 26. The Circumferential Inscription Trademark is a distinctive and famous
9 mark.

10 27. MTMC began manufacturing, using, marketing, distributing,
11 advertising, promoting, importing, offering for sale, and/or selling the Harley-
12 Davidson flashlight subsequent to Mag Instrument's Circumferential Inscription
13 Trademark becoming distinctive and famous.

14 28. MTMC's commercial use in commerce of the Circumferential
15 Inscription Trademark in connection with flashlights has caused the dilution of the
16 distinctive quality of the SSOA Trademark in violation of 15 U.S.C. §1125(c) and
17 California Business and Professions Code §14247.

18 29. MTMC's manufacture, use, marketing, distributing, advertising,
19 promoting, importing, offering for sale, and/or sale of flashlights with the
20 Circumferential Inscription Trademark constitutes statutory unfair competition in
21 violation of California Business & Professions Code §17200, et seq., common law
22 trademark infringement, and common law unfair competition.

23 30. MTMC, its officers, directors, agents, servants, employees, attorneys,
24 confederates, and all persons and/or entities acting for, with, by, through, and/or in
25 concert and participation with them, or any of them, are hereby permanently
26 enjoined from engaging in any of the following activities:
27
28

1 (a) manufacturing, using, marketing, distributing, advertising,
2 promoting, importing, offering for sale, and/or selling the Harley-Davidson
3 flashlight;

4 (b) manufacturing, using, importing, offering for sale, and/or selling
5 any flashlight that infringes the '438 patent and/or the '439 patent;

6 (c) inducing or enabling each other or others to manufacture, use,
7 import, offer for sale, and/or sell any flashlight that infringes the '438 patent and/or
8 the '439 patent;

9 (d) using Mag Instrument's SSOA Trademark, Circumferential
10 Inscription Trademark, or any other mark, design, reproduction, copy, or symbol
11 that is a colorable imitation thereof, or confusingly similar thereto, in connection
12 with the manufacturing, marketing, distribution, advertisement, promotion,
13 importation, offer for sale, and/or sale of flashlights not originating from or
14 authorized by Mag Instrument;

15 (e) using Mag Instrument's SSOA Trademark, Circumferential
16 Inscription Trademark, or any other mark, design, reproduction, copy, or symbol
17 that is a colorable imitation thereof, in any manner likely to cause confusion, to
18 cause mistake, or to deceive the consuming public;

19 (f) representing in any manner, or by any method whatsoever, that
20 goods, services, or other products provided by MTMC are sponsored, approved,
21 authorized by, or originate from Mag Instrument or otherwise taking any action
22 likely to cause confusion, mistake, or deception as to the origin, approval,
23 sponsorship, or certification of such goods or services;

24 (g) committing any acts calculated or likely to cause consumers to
25 believe that MTMC's products are Mag Instrument's products or are authorized by
26 Mag Instrument, unless they are such;

27 (h) infringing or diluting the distinctive quality of Mag Instrument's
28 SSOA Trademark and/or Circumferential Inscription Trademark; or

1 (i) unfairly competing with Mag Instrument in any manner.

2 32. Service by mail upon MTMC addressed to Anne H. Peck, Cooley
3 Godward Kronish LLP, Five Palo Alto Square, 3000 El Camino Real, Palo Alto,
4 California 94306-2155, of a copy of this Consent Judgment and Permanent
5 Injunction entered by the Court is deemed sufficient notice under Federal Rule of
6 Civil Procedure 65. It shall not be necessary for MTMC to sign any form of
7 acknowledgement of service.

8 33. The parties shall bear their own attorneys' fees and costs.
9

10 **IT IS SO ORDERED:**
11

12 Dated: April 03, 2009 _____
13 _____

14 By: 

15 Hon. Manuel L. Real
16 United States District Court Judge
17
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1 Approved as to form and content:
2

3 Dated: March 13, 2009

JONES DAY

4
5 By: 

Charles A. Kertell

6 Attorneys for Plaintiff
7 MAG INSTRUMENT, INC.
8

9 Dated: March 10, 2009

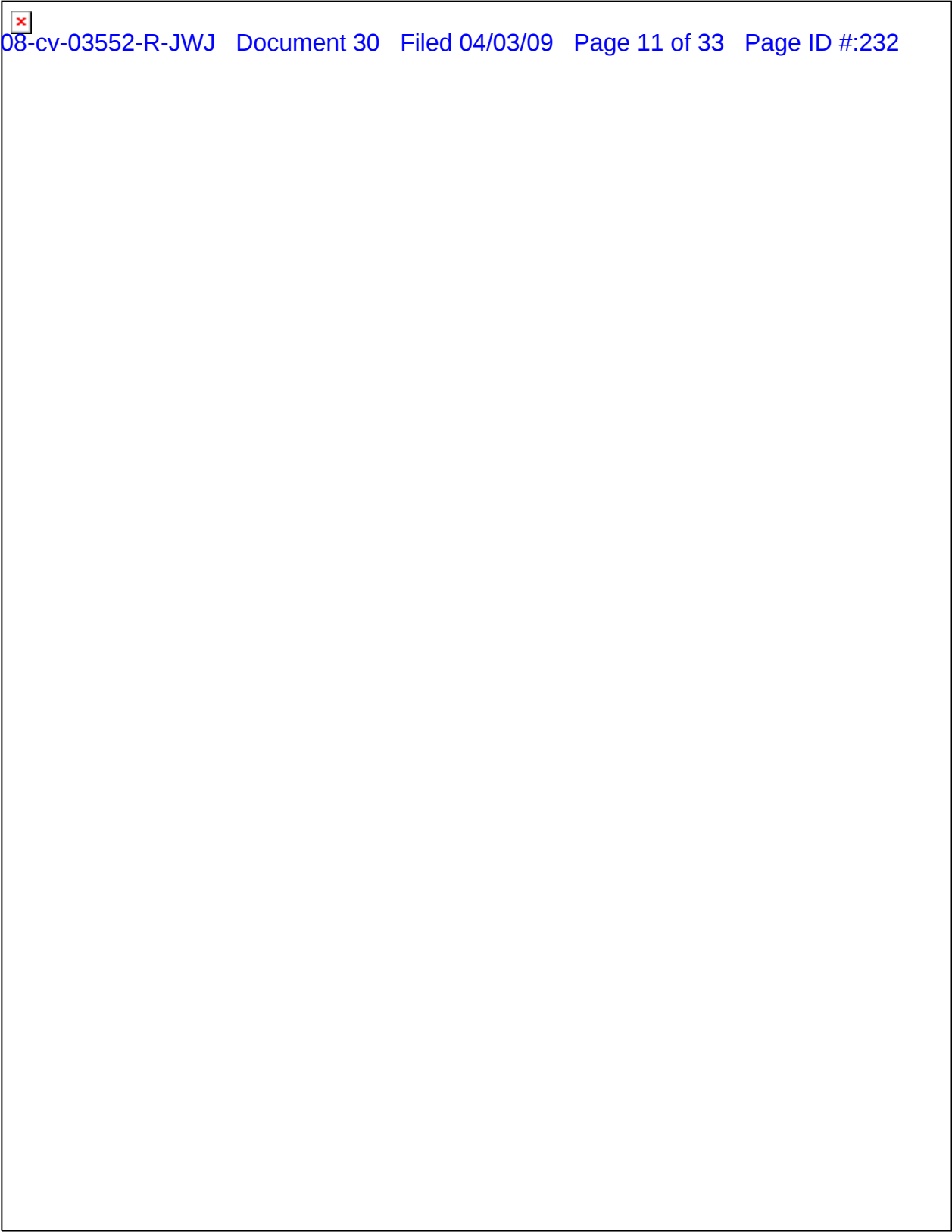
COOLEY GODWARD KRONISH LLP

10
11 By: 

Anne H. Peck

12 Attorneys for Defendant
13 MTMC, INC.
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EXHIBIT 1



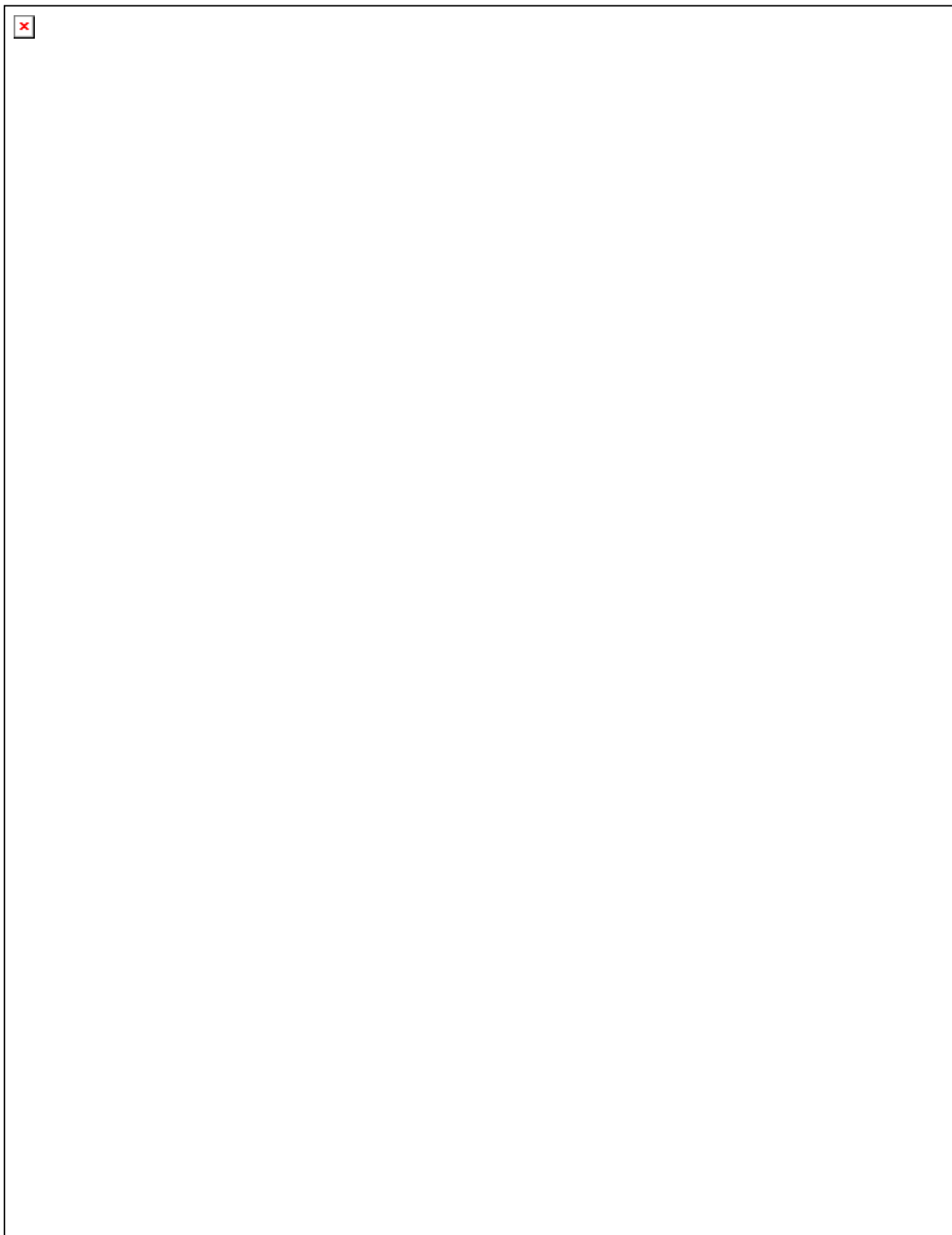




EXHIBIT 2



(12) **United States Design Patent** (10) **Patent No.:** **US D530,438 S**
Maglica (45) **Date of Patent:** **** Oct. 17, 2006**

(54) **MINIATURE FLASHLIGHT**

1,116,048 A 11/1914 Farber

(75) **Inventor:** **Anthony Maglica, Anaheim, CA (US)**

(Continued)

(73) **Assignee:** **Mag Instrument, Inc., Ontario, CA (US)**

FOREIGN PATENT DOCUMENTS

AU 114558 1/1942

(**) **Term:** **14 Years**

(Continued)

(21) **Appl. No.:** **07/411,576**

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(22) **Filed:** **Sep. 22, 1989**

P. 243 of Japanese Patent Gazette Feb. 16, 1982—Utility Model 42071.

Related U.S. Application Data

(Continued)

(62) Division of application No. 07/356,361, filed on May 23, 1989, now Pat. No. 4,942,505, which is a continuation of application No. 07/222,378, filed on Jul. 19, 1988, now Pat. No. 4,899,265, which is a continuation of application No. 07/034,918, filed on Apr. 6, 1987, now abandoned, which is a continuation of application No. 06/828,729, filed on Feb. 11, 1986, now Pat. No. 4,658,336, which is a continuation of application No. 06/648,032, filed on Sep. 6, 1984, now Pat. No. 4,577,263.

Primary Examiner—Alan P. Douglas

(74) **Attorney, Agent, or Firm**—Jones Day

(57)

CLAIM

The ornamental design for a miniature flashlight, as shown and described.

DESCRIPTION

(51) **LOC (8) Cl.** **26-02**

(52) **U.S. Cl.** **D26/49**

(58) **Field of Classification Search** **D26/37-50;**

362/157-8, 183-208

See application file for complete search history.

FIG. 1 is a front top perspective view of a miniature flashlight showing my new design;

FIG. 2 is a side elevational view thereof, the other side being identical

FIG. 3 is a top plan view thereof; and,

FIG. 4 is a bottom plan view thereof.

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1 Claim, 1 Drawing Sheet



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Exhibit 2

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"Mag-Lite", "Standard Head "D" & "C" Size Commercial Specifications", 2 pg. marked Confidential—Counsel Eyes Only—(Ex. BRX 119).

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Mag-Lite™ ad, "Strength & Reliability", 1 pg. (Ex. BRX 202 (Depo. Ex. PX 82)).

"The Last Flashlight You'll Ever Have to Buy" (Ptf's Ex. 3050).

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"Mag-lite™, The right light . . . for the job." 4 pg. brochure, (Ptf's Ex. 425).

"A precision tool . . .", by Mag-lite, 1 pg. (Ptf's Ex. 422-A).

"Pick up the lighters", by Mag Instrument, 1 pg. ad (Ptf's Ex. 422-B).

Mag-lite®, 1 pg. ad re C-Cell & D-Cell, (Ptf's Ex. 483).

View of flashlight, Ex. DX 5625.

View of flashlight, Ex. DX 5626.

View of flashlight, Ex. DX 5628.

View of flashlight, Ex. DX 5629.

View of flashlight, Ex. DX 5640.

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View of flashlight, Ex. DX 5641.
 View of flashlight, Ex. DX 5642.
 View of flashlight, Ex. DX 5643.
 View of flashlight, (Ptf's Ex. 92).
 View of flashlight, (Ptf's Ex. 93).
 View of flashlight, (Ptf's Ex. 95).
 View of flashlight, (Ptf's Ex. 96).
 View of flashlight, (Ptf's Ex. 98).
 View of flashlight, (Ptf's Ex. 100).
 View of flashlight, (Ptf's Ex. 103).
 View of flashlight, (Ptf's Ex. 104).
 View of flashlight, (Ptf's Ex. 106).
 View of flashlight, (Ptf's Ex. 108).
 View of flashlight, (Ptf's Ex. 247).
 View of flashlights, (6) (Ptf's Ex. 415).
 View of flashlight, (Ptf's Ex. 699).
 View of flashlight, (Ptf's Ex. 701).
 View of flashlight, (Ptf's Ex. 702).
 View of flashlight, (Ptf's Ex. 704).
 View of flashlight, (Ptf's Ex. 709).
 View of flashlight, (Ptf's Ex. 713).
 View of flashlight, (Ptf's Ex. 714).
 View of flashlight, (Ptf's Ex. 724).
 View of flashlight, (Ptf's Ex. 728).
 View of flashlight, (Ptf's Ex. 748 or 743?) (has carrying strap).
 View of flashlight, (Ptf's Ex. 740).
 View of flashlight, (Ptf's Ex. 744).
 View of flashlight, (Ptf's Ex. 747).
 Eveready Masterlites, The Light of a New Age, 11 pg. catalog, marked Ex. DX 5326.
 Eveready Daylo, Dealer's Edition Catalog No. 736, (1918), 8 pgs. (Ex. DX 5327).
 "The History of Portable Light in America", 24 pg. by Eveready (Ex. DX 5325).
 "Eveready Automatic Spotlights", 15 pg. brochure (Ex. DX 5324).
 50-pg. booklet, 1st legible page reads "To the founders and past presidents of the Bridgeport Metal Goods Manufacturing Company . . .", (Ex. No. not legible).
 View of flashlight with Coca Cola can and ruler, marked "5001".
 View of flashlight with Coca Cola can and ruler, marked "5002".
 View of flashlight with Coca Cola can and ruler, marked "5003".
 View of flashlight with Coca Cola can and ruler, marked "5004".
 View of flashlight with Coca Cola can and ruler, marked "5005".
 View of flashlight with Coca Cola can and ruler, marked "5006".
 View of flashlight with Coca Cola can and ruler, marked "5007".
 View of flashlight with Coca Cola can and ruler, marked "5008".
 View of flashlight with Coca Cola can and ruler, marked "5009".
 View of flashlight with Coca Cola can and ruler, marked "5023".
 View of flashlight with Coca Cola can and ruler, marked "5024".
 View of flashlight with Coca Cola can and ruler, marked "5025".
 View of flashlight with Coca Cola can and ruler, marked "5032".
 View of flashlight with Coca Cola can and ruler, marked "5033".
 View of flashlight with Coca Cola can and ruler, marked "5034".
 View of flashlight with Coca Cola can and ruler, marked "5035".
 View of flashlight with Coca Cola can and ruler, marked "5036".
 View of flashlight with Coca Cola can and ruler, marked "5045".
 View of flashlight with Coca Cola can and ruler, marked "5048".
 View of flashlight with Coca Cola can and ruler, marked "5049".
 View of flashlight with Coca Cola can and ruler, marked "5050".
 View of flashlight with Coca Cola can and ruler, marked "5051".
 View of flashlight with Coca Cola can and ruler, marked "5052".
 View of flashlight with Coca Cola can and ruler, marked "5056".
 View of flashlight with Coca Cola can and ruler, marked "5057".
 View of flashlight with Coca Cola can and ruler, marked "5060".
 View of flashlight with Coca Cola can and ruler, marked "5061".
 View of flashlight with Coca Cola can and ruler, marked "5062".
 View of flashlight with Coca Cola can and ruler, marked "5063".
 View of flashlight with Coca Cola can and ruler, marked "5064".
 View of flashlight with Coca Cola can and ruler, marked "5065".
 View of flashlight with Coca Cola can and ruler, marked "5067".
 View of flashlight with Coca Cola can and ruler, marked "5074A".
 View of flashlight with Coca Cola can and ruler, marked "5075A".
 View of flashlight with Coca Cola can and ruler, marked "5076".
 View of flashlight with Coca Cola can and ruler, marked "5078".
 View of flashlight with Coca Cola can and ruler, marked "5079".
 View of flashlight with Coca Cola can and ruler, marked "5080".
 View of flashlight with Coca Cola can and ruler, marked "5081".
 View of flashlight with Coca Cola can and ruler, marked "5082".
 View of flashlight with Coca Cola can and ruler, marked "5083".
 View of flashlight with Coca Cola can and ruler, marked "5084".
 View of flashlight with Coca Cola can, "Maxlite 5-3-2" box and ruler, marked "5111".
 View of flashlight with Coca Cola can and ruler, marked "5112".

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View of flashlight with Coca Cola can and ruler, marked "5115".
View of flashlight with Coca Cola can and ruler, marked "5118".
View of flashlight with Coca Cola can and ruler, marked "5118A".
View of flashlight with Coca Cola can and ruler, marked "5126".
View of flashlight with Coca Cola can and ruler, marked "5127".
View of flashlight with Coca Cola can and ruler, marked "5129".
View of flashlight with Coca Cola can and ruler, marked "5130".
View of flashlight with Coca Cola can and ruler, marked "5131".
View of flashlight with Coca Cola can and ruler, marked "5132".
View of flashlight with Coca Cola can and ruler, marked "5133".
View of flashlight with Coca Cola can and ruler, marked "5137A".
View of flashlight with Coca Cola can and ruler, marked "5145".
View of flashlight with Coca Cola can and ruler, marked "5147".
View of flashlight with Coca Cola can and ruler, marked "5149".
View of flashlight with Coca Cola can and ruler, marked "5154".
View of flashlight with Coca Cola can and ruler, marked "5279".
View of flashlight with Coca Cola can and ruler, marked "5300".
View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5301".
View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5302".
View of flashlight with Coca Cola can, "Rayovac Police Flashlight" box and ruler, marked "5303".
View of flashlight with Coca Cola can and ruler, marked "5304".
View of flashlight with Coca Cola can and ruler, marked "5305".
View of flashlight with Coca Cola can and ruler, marked "5306".
View of flashlight with Coca Cola can and ruler, marked "5307".
View of flashlight with Coca Cola can and ruler, marked "5308".
View of flashlight with Coca Cola can and ruler, marked "5309".
View of flashlight with Coca Cola can and ruler, marked "5310".
View of flashlight with Coca Cola can and ruler, marked "5311".
View of flashlight with Coca Cola can and ruler, marked "5312".
View of flashlight with Coca Cola can and ruler, marked "5313".
View of flashlight with Coca Cola can and ruler, marked "5314".
View of flashlight with Coca Cola can and ruler, marked "5315".

View of flashlight with Coca Cola can and ruler, marked "5317".
View of flashlight with Coca Cola can and ruler, marked "5318".
View of flashlight with Coca Cola can and ruler, marked "5319".
View of flashlight with Coca Cola can and ruler, marked "5320".
View of flashlight with Coca Cola can and ruler, marked "5321".
View of flashlight with Coca Cola can and ruler, marked "5322".
View of flashlight with Coca Cola can and ruler, marked "5841".
View of flashlight with Coca Cola can and ruler, marked "5845".
View of flashlight with Coca Cola can and ruler, marked "5846".
View of flashlight with Coca Cola can and ruler, marked "5971".
View of flashlight with Coca Cola can and ruler, marked "5972".
View of flashlight with Coca Cola can and ruler, marked "5973".
View of flashlight with Coca Cola can and ruler, marked "5974".
View of flashlight with Coca Cola can, "Bianci" box and ruler, marked "6005A".
View of flashlight with Coca Cola can and ruler, marked "6005A".
View of flashlight with Coca Cola can and ruler, marked "6112".
View of flashlight with Coca Cola can and ruler, marked "6118".
View of flashlight with Coca Cola can and ruler, marked "6119".
View of flashlight with Coca Cola can and ruler, marked "6120".
View of flashlight with Coca Cola can and ruler, marked "6121".
View of flashlight with Coca Cola can and ruler, marked "6124".
View of flashlight with Coca Cola can, container, and ruler, marked "12A".
View of flashlight with Coca Cola can, "Little Commander Pocketlight" packaging and ruler, marked "468".
View of flashlight with Coca Cola can and ruler, marked "2577".
View of flashlight with Coca Cola can and ruler, marked "2578".
View of flashlight with Coca Cola can and ruler, marked "2579".
View of flashlight with Coca Cola can and ruler, marked "2580".
View of flashlight with Coca Cola can and ruler, marked "2581".
View of flashlight with Coca Cola can and ruler, marked "2582".
View of flashlight with Coca Cola can and ruler, marked "2584".
View of flashlight with Coca Cola can and ruler, marked "2570".
View of flashlight with Coca Cola can and ruler, marked "2571".

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View of flashlight with Coca Cola can and ruler, marked "2572".	View of flashlight with Coca Cola can and ruler, marked "464 (CPX-55)".
View of flashlight with Coca Cola can and ruler, marked "2574".	View of flashlight with Coca Cola can and ruler, marked "CPX-422".
View of flashlight with Coca Cola can and ruler, marked "2577".	View of flashlight with Coca Cola can and ruler, marked "CPX-393".
View of flashlight with Coca Cola can and ruler, marked "2677".	View of flashlight with Coca Cola can and ruler, marked "CPX-385".
View of flashlight with Coca Cola can and ruler, marked "2742".	View of flashlight with Coca Cola can and ruler, marked "CPX-264".
View of flashlight with Coca Cola can and ruler, marked "2749".	View of flashlight with Coca Cola can and ruler, marked "349".
View of flashlight with Coca Cola can and ruler, marked "2753".	View of flashlight with Coca Cola can and ruler, marked "SL575".
View of flashlight with Coca Cola can and ruler, marked "2755".	View of flashlight with Coca Cola can and ruler, marked "SL351".
View of flashlight with Coca Cola can and ruler, marked "2874".	View of flashlight with Coca Cola can and ruler, marked "SL699".
View of flashlight with Coca Cola can and ruler, marked "3717".	View of flashlight with Coca Cola can and ruler, marked "SL102".
View of flashlight marked "2678".	View of flashlight, marked Deposition Exhibit 45 (?).
View of flashlight marked "2679".	Weston, "Mini Flash Lite", advertisement.
View of flashlight, with two additional parts, marked "2580".	
View of flashlight with ruler.	* cited by examiner

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Fig. 1



Fig. 2

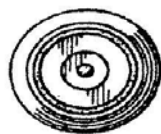


Fig. 3

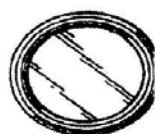


Fig. 4

EXHIBIT 3



US00D530439S

(12) **United States Design Patent** (10) **Patent No.:** **US D530,439 S**
Maglica (45) **Date of Patent:** **★ Oct. 17, 2006**

(54) **FLASHLIGHT** 1,768,554 A 1/1930 Freitag
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 (75) **Inventor:** **Anthony Maglica, Anaheim, CA (US)** 1,769,436 A 7/1930 Koratzky
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 (73) **Assignee:** **Mag Instrument, Inc., Ontario, CA (US)** 1,905,787 A 4/1933 Barber
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(**) **Term:** **14 Years**

(21) **Appl. No.:** **09/385,129**

(22) **Filed:** **Aug. 27, 1999**

Related U.S. Application Data

(63) Continuation of application No. 07/410,965, filed on Sep. 22, 1989, now abandoned, which is a division of application No. 07/356,361, filed on May 23, 1989, now Pat. No. 4,942,505, which is a continuation of application No. 07/222,378, filed on Jul. 19, 1988, now Pat. No. 4,899,265, which is a continuation of application No. 07/034,918, filed on Apr. 6, 1987, now abandoned, which is a continuation of application No. 06/828,729, filed on Feb. 11, 1986, now Pat. No. 4,658,336, which is a continuation of application No. 06/648,032, filed on Sep. 6, 1984, now Pat. No. 4,577,263.

(51) **LOC (8) Cl.** **26-02**

(52) **U.S. Cl.** **D26/49**

(58) **Field of Classification Search** D26/37-50;
 362/157-158, 183-208

See application file for complete search history.

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Primary Examiner—Alan P. Douglas

(74) *Attorney, Agent, or Firm*—Jones Day

(57)

CLAIM

The ornamental design for a flashlight, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of a flashlight showing my new design;

FIG. 2 is a side elevational view thereof; and,

FIG. 3 is a front elevational view thereof.

1 Claim, 1 Drawing Sheet

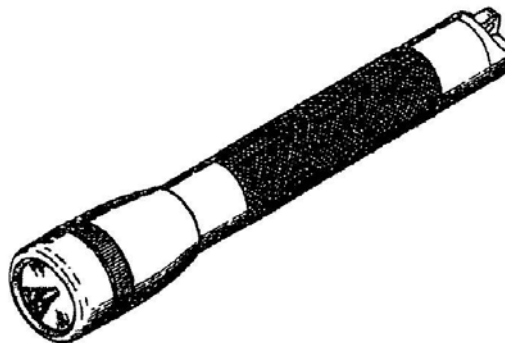


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 "Power Probe—Medical Flashlight" ad by Police Equipment Division (1978), 1 pg., (Ex. BRX 204).
 "The Perfect Premium/Incentive" by Tru-Grit® Flashlights, 1 pg. (Ex. DX 5046).
 "Yardney Presents 2 Bright Lights", Yardney Electric Corporation, 1 pg. (Ex. DX 5047).
 B-Lite™, "America's finest Hand Held Flashlight"—"C" cell, 1 pg. price list and order form (Ex. DX 5043).
 B-Lite™, "For Those Who Demand The Very Best!", 2 pg. ad, (Ex. DX 5042).
 B-Lite, 2 pg. cut-away view and order form and price list (Ex. DX 5039).
 Bianchi B-Lite "The World's Finest Handheld Spotlight", 3 pg. ad re Police Accessories (Ex. DX 5038).
 Bianchi B-Lite, 3 pg. 1977 Catalog (Ex. DX 5040).
 Bianchi B-Lite, 4 pg. 1978 listing (Ex. DX 5041).
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 Bianchi B-Lite, 1 pg. ad and price list (Ex. 6471).
 Bianchi Super B-Lite, "New High Intensity Reflector!", 1 pg. ad (Ex. 6472).
 B-Lite "All New Push-Button Switch!", 1 pg. ad (Ptf's Ex. 3045).
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 Bianchi B-Lite, 1 pg. ad marked Ptf's Ex. 3043.
 Safariland, 4 pg. brochure (Ex. DX 5015).
 Safariland 76, 4 pg. brochure (Ex. DX 5020).
 Safariland 1977, 5 pg. brochure (Ex. DX 5017).
 1978 Safariland brochure, 6 pgs. (Ex. DX 5018).
 Safariland 1980 brochure, 8 pgs. (Ex. DX 5021).
 Safariland Kel-lite: "The Last Flashlight You'll Ever Have To Buy", 3 pg. brochure (Ex. BRX 200).
 Safariland Pursuit Case—Firepower, 2 pg. ad (Ptf's Ex. 3042).
 Pro-Light brochure, Jabsco Products ITT (1978), 4 pg. brochure (Ex. DX 5026).
 Pro-Light brochure, 6 pgs. (Ex. DX 5027).
 Sireno Pro-Light, Professional Flashlights, 1 pg. ad by Jabsco Products ITT (1978) (Ex. DX 5028).
 Greystone Marketing, 4 pg. Ordering Information and price list (Ex. DX 5029).
 Pro-Light Distributer Price Schedule ' by Greystone Marketing, 4 pgs. (Ex. DX 5030).
 Pro-Light™, Professional Flashlights, brochure "Introducing Pro-Loc Adjustable Beam Flashlights", by Greystone Marketing, Inc. (1982), 16 pgs. (Ex. DX 5031).
 Pro-Light™, Professional Flashlights brochure, 8 pgs. (Ptf's Ex. 478-A).
 Pro-Light brochure, by VSI Recreation Products, 2 pgs. (Ptf's Ex. CX-1312).
 Rayovac Corporation, 4 pg. brochure re Police Flashlights, (Ex. BRX-342).
 "Defensive Tactics Flashlights", official DTI Manual by John G. Peters, Jr., 31 pgs. (Ex. BRX 212).
 Bass Pro Shops, Christmas 1983 catalog, 3 pgs., (Ex. BRX 210).
 "The Law Officer's Magazine—Police", FBI, The Hoover Years, 2 pg. ad re Mag-Lite (Ex. BRX 302).
 "The Law Officer's Magazine—Police", Mar.-Apr. 1978, vol. 2, No. 2, cover and 3 pgs. (Ptf's Ex. CX-1314).
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 Sa-So Sargent-Sowell Inc. brochure, 7 pgs. (Ex. BRX 206).
 "Home & Auto" ad (Nov. 1980), 3 pgs. (Ex. BRX 216).
 "Mag-Lite", "Standard Head "D" & "C" Size Commercial Specifications", 2 pg. marked Confidential—Counsel Eyes Only—(Ex. BRX 119).
 G.T. Price Products, Inc. "The Professional Line" catalog, 9 pgs. (Ptf's Ex. CX 1431).
 National Law Enforcement Supply, "Off-Duty Gift Catalog", 5 pgs. (Ptf's Ex. CX 1313).
 "Magnificent!", Mag Charger by Mag Instrument, 2 pg. ad May 1984 (Ex. BRX 213).
 Mag Lite ad "They demand . . . the very best.", 1 pg. (Ex. BRX 291).
 Mag-Lite™ ad, "Strength & Reliability", 1 pg. (Ex. BRX 202 (Depo. Ex. PX 82)).
 "The Last Flashlight You'll Ever Have to Buy" (Ptf's Ex. 3050).
 The Sunday Oregonian, Dec. 1982 "From: GI Joe's", 1 pg. ad re Mag-Lite (Ptf's Ex. 3055).
 Mag-Lite, 1 pg. ad by The 63rd CSGA Annual National Convention and Exhibition, Feb. 3-6, 1980 (Ex. BRX 219).
 Mag Instrument ad, 1 pg. (Ex. BRX 211).
 Mag-Lite add, 1 pg. by Nationwide Sports Distributor, (Ex. BRX 220).
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 "A precision tool . . ." by Mag-lite, 1 pg. (Ptf's Ex. 422-A).
 "Pick up the lighters", by Mag Instrument, 1 pg. ad (Ptf's Ex. 422-B).
 Mag-lite®, 1 pg. ad re C-Cell & D-Cell, (Ptf's Ex. 483).
 View of flashlight, Ex. DX 5625.
 View of flashlight, Ex. DX 5626.
 View of flashlight Ex. DX 5628.
 View of flashlight, Ex. DX 5629.
 View of flashlight, Ex. DX 5640.
 View of flashlight, Ex. DX 5641.
 View of flashlight, Ex. DX 5642.
 View of flashlight, Ex. DX 5643.
 View of flashlight, (Ptf's Ex. 92).
 View of flashlight, (Ptf's Ex. 93).
 View of flashlight, (Ptf's Ex. 95).
 View of flashlight, (Ptf's Ex. 96).
 View of flashlight, (Ptf's Ex. 98).
 View of flashlight, (Ptf's Ex. 100).
 View of flashlight, (Ptf's Ex. 103).
 View of flashlight, (Ptf's Ex. 104).
 View of flashlight, (Ptf's Ex. 106).
 View of flashlight, (Ptf's Ex. 108).
 View of flashlight, (Ptf's Ex. 247).
 View of flashlights, (6) (Ptf's Ex. 415).
 View of flashlight, (Ptf's Ex. 699).
 View of flashlight, (Ptf's Ex. 701).
 View of flashlight, (Ptf's Ex. 702).
 View of flashlight, (Ptf's Ex. 704).
 View of flashlight, (Ptf's Ex. 709).
 View of flashlight, (Ptf's Ex. 713).
 View of flashlight, (Ptf's Ex. 714).

Exhibit 3

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View of flashlight, (Ptf's Ex. 724).
View of flashlight, (Ptf's Ex. 728).
View of flashlight, (Ptf's Ex. 748 or 743?) (has carrying strap).
View of flashlight, (Ptf's Ex. 740).
View of flashlight, (Ptf's Ex. 744).
View of flashlight, (Ptf's Ex. 747).
Eveready Masterlites, The Light of a New Age, 11 pg. catalog, marked Ex. DX 5326.
Eveready Daylo, Dealer's Edition Catalog No. 736, (1918), 8 pgs. (Ex. DX 5327).
"The History of Portable Light in America", 24 pg. by Eveready (Ex. DX 5325).
"Eveready Automatic Spotlights", 15 pg. brochure (Ex. DX 5324).
50-pg. booklet, 1st legible page reads "To the founders and past presidents of the Bridgeport Metal Goods Manufacturing Company . . .", (Ex. No. not legible).
View of flashlight with Coca Cola can and ruler, marked "5001".
View of flashlight with Coca Cola can and ruler, marked "5002".
View of flashlight with Coca Cola can and ruler, marked "5003".
View of flashlight with Coca Cola can and ruler, marked "5004".
View of flashlight with Coca Cola can and ruler, marked "5005".
View of flashlight with Coca Cola can and ruler, marked "5006".
View of flashlight with Coca Cola can and ruler, marked "5007".
View of flashlight with Coca Cola can and ruler, marked "5008".
View of flashlight with Coca Cola can and ruler, marked "5009".
View of flashlight with Coca Cola can and ruler, marked "5023".
View of flashlight with Coca Cola can and ruler, marked "5024".
View of flashlight with Coca Cola can and ruler, marked "5025".
View of flashlight with Coca Cola can and ruler, marked "5032".
View of flashlight with Coca Cola can and ruler, marked "5033".
View of flashlight with Coca Cola can and ruler, marked "5034".
View of flashlight with Coca Cola can and ruler, marked "5035".
View of flashlight with Coca Cola can and ruler, marked "5036".
View of flashlight with Coca Cola can and ruler, marked "5045".
View of flashlight with Coca Cola can and ruler, marked "5048".
View of flashlight with Coca Cola can and ruler, marked "5049".
View of flashlight with Coca Cola can and ruler, marked "5050".
View of flashlight with Coca Cola can and ruler, marked "5051".
View of flashlight with Coca Cola can and ruler, marked "5052".
View of flashlight with Coca Cola can and ruler, marked "5056".
View of flashlight with Coca Cola can and ruler, marked "5057".
View of flashlight with Coca Cola can and ruler, marked "5060".
View of flashlight with Coca Cola can and ruler, marked "5061".
View of flashlight with Coca Cola can and ruler, marked "5062".
View of flashlight with Coca Cola can and ruler, marked "5063".
View of flashlight with Coca Cola can and ruler, marked "5064".
View of flashlight with Coca Cola can and ruler, marked "5065".
View of flashlight with Coca Cola can and ruler, marked "5067".
View of flashlight with Coca Cola can and ruler, marked "5074A".
View of flashlight with Coca Cola can and ruler, marked "5075A".
View of flashlight with Coca Cola can and ruler, marked "5076".
View of flashlight with Coca Cola can and ruler, marked "5078".
View of flashlight with Coca Cola can and ruler, marked "5079".
View of flashlight with Coca Cola can and ruler, marked "5080".
View of flashlight with Coca Cola can and ruler, marked "5081".
View of flashlight with Coca Cola can and ruler, marked "5082".
View of flashlight with Coca Cola can and ruler, marked "5083".
View of flashlight with Coca Cola can and ruler, marked "5084".
View of flashlight with Coca Cola can, "Maxlite 5-3-2" box and ruler, marked "5111".
View of flashlight with Coca Cola can and ruler, marked "5112".
View of flashlight with Coca Cola can and ruler, marked "5115".
View of flashlight with Coca Cola can and ruler, marked "5118".
View of flashlight with Coca Cola can and ruler, marked "5118A".
View of flashlight with Coca Cola can and ruler, marked "5126".
View of flashlight with Coca Cola can and ruler, marked "5127".
View of flashlight with Coca Cola can and ruler, marked "5129".
View of flashlight with Coca Cola can and ruler, marked "5130".
View of flashlight with Coca Cola can and ruler, marked "5131".
View of flashlight with Coca Cola can and ruler, marked "5132".
View of flashlight with Coca Cola can and ruler, marked "5133".
View of flashlight with Coca Cola can and ruler, marked "5137A".

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View of flashlight with Coca Cola can and ruler, marked "5145".	View of flashlight with Coca Cola can and ruler, marked "5972".
View of flashlight with Coca Cola can and ruler, marked "5147".	View of flashlight with Coca Cola can and ruler, marked "5973".
View of flashlight with Coca Cola can and ruler, marked "5149".	View of flashlight with Coca Cola can and ruler, marked "5974".
View of flashlight with Coca Cola can and ruler, marked "5154".	View of flashlight with Coca Cola can, "Bianchi" box and ruler, marked "6005A".
View of flashlight with Coca Cola can and ruler, marked "5279".	View of flashlight with Coca Cola can and ruler, marked "6005A".
View of flashlight with Coca Cola can and ruler, marked "5300".	View of flashlight with Coca Cola can and ruler, marked "6112".
View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5301".	View of flashlight with Coca Cola can and ruler, marked "6118".
View of flashlight with Coca Cola can, "Fulton" box and ruler, marked "5302".	View of flashlight with Coca Cola can and ruler, marked "6119".
View of flashlight with Coca Cola can, "Rayovac Police Flashlight" box and ruler, marked "5303".	View of flashlight with Coca Cola can and ruler, marked "6120".
View of flashlight with Coca Cola can and ruler, marked "5304".	View of flashlight with Coca Cola can and ruler, marked "6121".
View of flashlight with Coca Cola can and ruler, marked "5305".	View of flashlight with Coca Cola can and ruler, marked "6124".
View of flashlight with Coca Cola can and ruler, marked "5306".	View of flashlight with Coca Cola can, container, and ruler, marked "12A".
View of flashlight with Coca Cola can and ruler, marked "5307".	View of flashlight with Coca Cola can, "Little Commander Pocketlight" packaging and ruler, marked "468".
View of flashlight with Coca Cola can and ruler, marked "5308".	View of flashlight with Coca Cola can and ruler, marked "2577".
View of flashlight with Coca Cola can and ruler, marked "5309".	View of flashlight with Coca Cola can and ruler, marked "2578".
View of flashlight with Coca Cola can and ruler, marked "5310".	View of flashlight with Coca Cola can and ruler, marked "2579".
View of flashlight with Coca Cola can and ruler, marked "5311".	View of flashlight with Coca Cola can and ruler, marked "2580".
View of flashlight with Coca Cola can and ruler, marked "5312".	View of flashlight with Coca Cola can and ruler, marked "2581".
View of flashlight with Coca Cola can and ruler, marked "5313".	View of flashlight with Coca Cola can and ruler, marked "2582".
View of flashlight with Coca Cola can and ruler, marked "5314".	View of flashlight with Coca Cola can and ruler, marked "2584".
View of flashlight with Coca Cola can and ruler, marked "5315".	View of flashlight with Coca Cola can and ruler, marked "2570".
View of flashlight with Coca Cola can and ruler, marked "5315".	View of flashlight with Coca Cola can and ruler, marked "2571".
View of flashlight with Coca Cola can and ruler, marked "5317".	View of flashlight with Coca Cola can and ruler, marked "2572".
View of flashlight with Coca Cola can and ruler, marked "5318".	View of flashlight with Coca Cola can and ruler, marked "2574".
View of flashlight with Coca Cola can and ruler, marked "5319".	View of flashlight with Coca Cola can and ruler, marked "2677".
View of flashlight with Coca Cola can and ruler, marked "5320".	View of flashlight with Coca Cola can and ruler, marked "2742".
View of flashlight with Coca Cola can and ruler, marked "5321".	View of flashlight with Coca Cola can and ruler, marked "2749".
View of flashlight with Coca Cola can and ruler, marked "5322".	View of flashlight with Coca Cola can and ruler, marked "2753".
View of flashlight with Coca Cola can and ruler, marked "5841".	View of flashlight with Coca Cola can and ruler, marked "2755".
View of flashlight with Coca Cola can and ruler, marked "5845".	View of flashlight with Coca Cola can and ruler, marked "2874".
View of flashlight with Coca Cola can and ruler, marked "5846".	View of flashlight with Coca Cola can and ruler, marked "3717".
View of flashlight with Coca Cola can and ruler, marked "5971".	View of flashlight marked "2678".
	View of flashlight marked "2679".

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View of flashlight, with two additional parts, marked "2580".

View of flashlight with ruler.

View of flashlight with Coca Cola can and ruler, marked "464 (CPX-55)".

View of flashlight with Coca Cola can and ruler, marked "CPX-422".

View of flashlight with Coca Cola can and ruler, marked "CPX-393".

View of flashlight with Coca Cola can and ruler, marked "CPX-385".

View of flashlight with Coca Cola can and ruler, marked "CPX-264".

View of flashlight with Coca Cola can and ruler, marked "349".

View of flashlight with Coca Cola can and ruler, marked "SL575".

View of flashlight with Coca Cola can and ruler, marked "SL351".

View of flashlight with Coca Cola can and ruler, marked "SL699".

View of flashlight with Coca Cola can and ruler, marked "SL102".

View of flashlight, marked Deposition Exhibit 45 (?).

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Central Purchasing, Inc.*, No. 89-4668 ER (JR), filed Apr. 1990.

Consent Judgment and Injunction in *Mag Instrument, Inc. v. Dayton Hudson Corporation*, No. 89-0529 ER (JR), filed Feb. 1990.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Gila Products Limited*, No. 89-CV-7802, filed Nov. 1988.

Consent Judgment and Injunction in *Mag Instrument, Inc. v. Jadico Limited, Inc.*, No. 89-4259-CV-C-9, filed Jun. 1989.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Jadico Limited, Inc.*, No. 89-4260-CV-C-5, filed Jul. 1989.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Jomira/Advance, Inc.*, No. 89-20286 RPA, filed Aug. 1989.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Jomira/Advance, Inc.*, No. 89-20447 RFP, filed Aug. 1989.

Initial Determination, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.

Views of the Commission, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.

Decision in *Mag v. The U.S. Int'l Trade Commission* (*Kassner Imports, Inc.*; *Brinkmann Corporation*; *Brinkmann International (Hong Kong), Ltd.*; and *J. Baxter Brinkmann International Corporation*, Intervenor, — 88-1313 decided Feb. 15, 1989.

Notice of Issuance of General Exclusion Order, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.

General Exclusion Order, in the matter of Certain Small Aluminum Flashlights and Components Thereof, Investigation No. 337-TA-254.

Opinion; Findings of Fact and Conclusions of Law, in *Kassner Imports, Inc. v. Mag Instrument & Mag Instrument, Inc. v. Kassner Imports, Inc.* — CV 86-802 FFF, filed Jan. 6, 1989.

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Xscribe Computer-Aided Transcription—George Price Testimony Nov. 4, 1988 "Price-Direct", pp. DA-77 through DA-81.

Xscribe Computer-Aided Transcription—Gerald Ford Testimony Nov. 2, 1988, pp. 4, 23 & '24.

Injunction and Partial Consent Judgment re *Mag Instrument, Inc. v. K Mart Corporation*, No. 89-1203-ER (JR), filed Aug. 31, 1989.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Longs Drug Stores California, Inc.*, No. C 619212, filed Jan. 22, 1990.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Outdoor Sports Headquarters, Inc.*, No. C-3-89-411, filed Oct. 13, 1989.

Consent Judgment and Permanent Injunction in *Mag Instrument, Inc. v. Outdoor Sports Headquarters, Inc.*, No. C-3-89-410, filed Oct. 13, 1989.

Injunction and Consent Judgment in *Mag Instrument, Inc. v. Sears, Roebuck & Company*, No. 89-0972 ER (JR), filed Dec. 13, 1989.

Injunction and Consent Judgment, in *Mag Instrument, Inc. v. Sears, Roebuck and Co.*, No. 89-0972 ER (JR), filed Jan. 17, 1990.

Consent Judgment and Permanent Injunction, in *Mag Instrument, Inc. v. Streamlight, Inc.*, No. 85-6104 SVW(Kx), filed Jan. 16, 1986.

Final Judgment by Consent and Permanent Injunction, in *Mag Instrument, Inc. v. Streamlight, Inc.*, No. CV-87-02530 ER (JR), filed Sep. 10, 1990.

Weston, "Mini Flash Lite", advertisement received in U.S. Patent & Trademark Office, Jul. 11, 1949.

Brinkmann, Micro-Max 1 package Insert, Copyright 1987, (Photocopies of flashlight included in Package and Pictures of Disassembled Flashlight Enclosed).

U.S. Patent

Oct. 17, 2006

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FIG. 1.

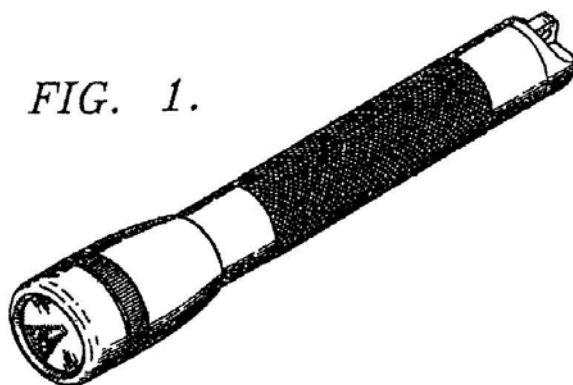


FIG. 2.

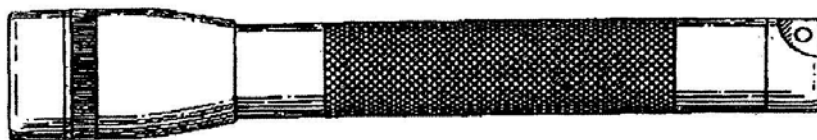


FIG. 3.



EXHIBIT 4

Int. Cl.: 11

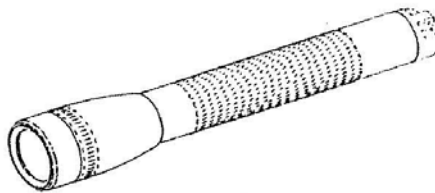
Prior U.S. Cl.: 21

Reg. No. 2,074,795

United States Patent and Trademark Office

Registered July 1, 1997

**TRADEMARK
PRINCIPAL REGISTER**



MAG INSTRUMENT, INC. (CALIFORNIA CORPORATION)
1635 SOUTH SACRAMENTO AVENUE
ONTARIO, CA 91776

FOR: FLASHLIGHTS, IN CLASS 11 (U.S. CL. 21).

FIRST USE 1-0-1984; IN COMMERCE 1-0-1984.

THE MARK IS THE SHAPE, STYLE AND OVERALL APPEARANCE OF THE FLASHLIGHT ITSELF WHICH IS CHARACTERIZED BY THE RATIO OF THE LENGTH OF THE

HEAD TO THE OVERALL LENGTH OF THE FLASHLIGHT, THE RATIO OF THE OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL, AND THE PROFILE OF THE TRANSITION FROM THE GREATEST OUTER DIAMETER OF THE HEAD TO THE OUTER DIAMETER OF THE BARREL.

SEC. 2(F).

SER. NO. 74-403,053, FILED 6-14-1993.

RANDY RICARDO, EXAMINING ATTORNEY

Exhibit 4

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EXHIBIT 5

Int. Cl.: 11

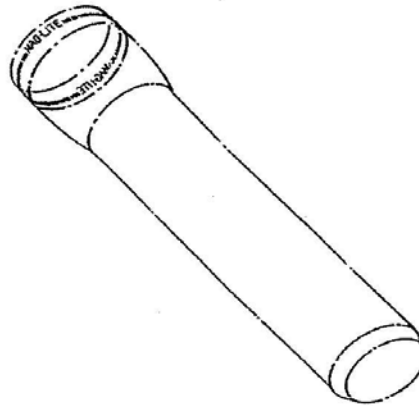
Prior U.S. Cl.: 21

United States Patent and Trademark Office

Reg. No. 1,808,998

Registered Dec. 7, 1993

**TRADEMARK
PRINCIPAL REGISTER**



MAG INSTRUMENT, INC. (CALIFORNIA CORPORATION)
1635 SOUTH SACRAMENTO AVENUE
ONTARIO, CA 91761

FOR: FLASHLIGHTS, IN CLASS 11 (U.S. CL. 21).

FIRST USE 2-22-1979; IN COMMERCE 2-22-1979.

OWNER OF U.S. REG. NOS. 1,154,816, 1,528,125 AND OTHERS.

THE DOTTED LINING SHOWN IN THE DRAWING IS NOT A PART OF THE MARK, BUT RATHER SERVES ONLY TO SHOW THE POSITION OF A WORDMARK.

THE MARK CONSISTS OF THE PLACEMENT OF AN INSCRIPTION AROUND THE CIRCUMFERENCE OF THE CIRCULAR FACE CAP COVER OR HEAD OF A FLASHLIGHT. THE INSCRIPTION MAY VARY. THE INSCRIPTION IS DISPLAYED IN A COLOR CONTRASTING WITH THE COLOR OF THE REST OF THE FLASHLIGHT.

SER. NO. 73-746,785, FILED 8-18-1988.

STEPHEN JEFFRIES, EXAMINING ATTORNEY